

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ANSON WHITTED,

Petitioner,

v.

D. MARTUSCELLO,

Respondent.
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MEMORANDUM DECISION

11 CV 1222 (VB)

Briccetti, J.:

Before the Court is Magistrate Judge Paul E. Davison’s Report and Recommendation (“R&R”) on petitioner Anson Whitted’s petition for a writ of habeas corpus under 28 U.S.C. § 2254, challenging his February 28, 2000, conviction in Orange County Court for criminal possession of a weapon. The conviction became final on March 3, 2007, following petitioner’s re-sentencing on January 31, 2007. Judge Davison recommended the Court dismiss the petition as barred by the AEDPA statute of limitations. The Court presumes familiarity with the factual and procedural background of this case. For the following reasons, the Court adopts the R&R as the opinion of the Court and dismisses the petition.

A district court reviewing a magistrate judge’s report and recommendation “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Parties may raise objections to the report and recommendation, but the objections must be “specific[,] written,” and submitted within 14 days after being served with a copy of the recommended disposition. Fed. R. Civ. P. 72(b)(2); 28 U.S.C. § 636(b)(1).

Insofar as a report and recommendation deals with a dispositive motion, a district court must conduct a de novo review of those portions of the report or specified proposed findings or recommendations to which timely objections are made. 28 U.S.C. § 636(b)(1)(C). The district court may adopt those portions of a report and recommendation to which no timely objections

have been made, provided no clear error is apparent from the face of the record. Lewis v. Zon, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008); Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985). The clearly erroneous standard also applies when a party makes only conclusory or general objections, or simply reiterates his original arguments. Ortiz v. Barkley, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008).

Petitioner did not object to Judge Davison's R&R.

The Court has reviewed Judge Davison's thorough and well-reasoned R&R and finds no error, clear or otherwise.

CONCLUSION

Accordingly, the Court adopts the R&R in its entirety. The petition for a writ of habeas corpus is DISMISSED. The Clerk is instructed to enter judgment accordingly and close this case.

As petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. See 28 U.S.C. § 2253(c)(2); Love v. McCray, 413 F.3d 192, 195 (2d Cir. 2005). The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. See Coppedge v United States, 369 U.S. 438, 444-45 (1962).

Dated: April 3, 2014
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read "Vincent Briccetti", written over a horizontal line.

Vincent L. Briccetti
United States District Judge